

- (i) The nature of the liabilities;
- (ii) When and under what circumstances created;
- (iii) The corporate business reason for assumption by the controlled corporation; and
- (iv) Whether such assumption eliminates the transferor's primary liability.

(b) Every such controlled corporation shall file with its income tax return for the taxable year in which the exchange is consummated—

(1) A complete description of all the property received from the transferors.

(2) A statement of the cost or other basis thereof in the hands of the transferors adjusted to the date of transfer.

(3) The following information with respect to the capital stock of the controlled corporation—

(i) The total issued and outstanding capital stock immediately prior to and immediately after the exchange, with a complete description of each class of stock;

(ii) The classes of stock and number of shares issued to each transferor in the exchange, and the number of shares of each class of stock owned by each transferor immediately prior to and immediately after the exchange, and

(iii) The fair market value of the capital stock as of the date of exchange which was issued to each transferor.

(4) The following information with respect to securities of the controlled corporation—

(i) The principal amount and terms of all securities outstanding immediately prior to and immediately after the exchange,

(ii) The principal amount and terms of securities issued to each transferor in the exchange, with a statement showing each transferor's holdings of securities of the controlled corporation immediately prior to and immediately after the exchange,

(iii) The fair market value of the securities issued to the transferors on the date of the exchange, and

(iv) A statement as to whether the securities issued in the exchange are subordinated in any way to other claims against the controlled corporation.

(5) The amount of money, if any, which passed to each of the transferors in connection with the transaction.

(6) With respect to other property which passed to each transferor—

(i) A complete description of each separate item;

(ii) The fair market value of each separate item at the date of exchange, and

(iii) In the case of a corporate transferor, the adjusted basis of each separate item in the hands of the controlled corporation immediately before the distribution of such other property to the corporate transferor in connection with the exchange.

(7) The following information as to the transferor's liabilities assumed by the controlled corporation in the exchange—

(i) The amount and a description thereof,

(ii) When and under what circumstances created, and

(iii) The corporate business reason or reasons for assumption by the controlled corporation.

(c) Permanent records in substantial form shall be kept by every taxpayer who participates in the type of exchange described in section 351, showing the information listed above, in order to facilitate the determination of gain or loss from a subsequent disposition of stock or securities and other property, if any, received in the exchange.

EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

§ 1.354-1 Exchanges of stock and securities in certain reorganizations.

(a) Section 354 provides that under certain circumstances no gain or loss is recognized to a shareholder who surrenders his stock in exchange for other stock or to a security holder who surrenders his securities in exchange for stock. Section 354 also provides that under certain circumstances a security holder may surrender securities and receive securities in the same principal amount or in a lesser principal amount without the recognition of gain or loss to him. The exchanges to which section 354 applies must be pursuant to a plan of reorganization as provided in section

368(a) and the stock and securities surrendered as well as the stock and securities received must be those of a corporation which is a party to the reorganization. Section 354 does not apply to exchanges pursuant to a reorganization described in section 368(a)(1)(D) unless the transferor corporation—

(1) Transfers all or substantially all of its assets to a single corporation, and

(2) Distributes all of its remaining properties (if any) and the stock, securities and other properties received in the exchange to its shareholders or security holders in pursuance of the plan of reorganization. The fact that properties retained by the transferor corporation, or received in exchange for the properties transferred in the reorganization, are used to satisfy existing liabilities not represented by securities and which were incurred in the ordinary course of business before the reorganization does not prevent the application of section 354 to an exchange pursuant to a plan of reorganization defined in section 368(a)(1)(D).

(b) Except as provided in section 354 (c) and (d), section 354 is not applicable to an exchange of stock or securities if a greater principal amount of securities is received than the principal amount of securities the recipient surrenders, or if securities are received and the recipient surrenders no securities. See, however, section 356 and regulations pertaining to such section. See also section 306 with respect to the receipt of preferred stock in a transaction to which section 354 is applicable.

(c) An exchange of stock or securities shall be subject to section 354(a)(1) even though—

(1) Such exchange is not pursuant to a plan of reorganization described in section 368(a), and

(2) The principal amount of the securities received exceeds the principal amount of the securities surrendered or if securities are received and no securities are surrendered—

if such exchange is pursuant to a plan of reorganization for a railroad corporation as defined in section 77(m) of the Bankruptcy Act (11 U.S.C. 205(m)) and is approved by the Interstate Commerce Commission under section 77 of

such act or under section 20b of the Interstate Commerce Act (49 U.S.C. 20b) as being in the public interest. Section 354 is not applicable to such exchanges if there is received property other than stock or securities. See, however, section 356 and regulations pertaining to such section.

(d) The rules of section 354 may be illustrated by the following examples:

Example 1. Pursuant to a reorganization under section 368(a) to which Corporations T and W are parties, A, a shareholder in Corporation T, surrenders all his common stock in Corporation T in exchange for common stock of Corporation W. No gain or loss is recognized to A.

Example 2. Pursuant to a reorganization under section 368(a) to which Corporations X and Y (which are not railroad corporations) are parties, B, a shareholder in Corporation X, surrenders all his stock in X for stock and securities in Y. Section 354 does not apply to this exchange. See, however, section 356.

Example 3. C, a shareholder in Corporation Z (which is not a railroad corporation), surrenders all his stock in Corporation Z in exchange for securities in Corporation Z. Whether or not this exchange is in connection with a recapitalization under section 368(a)(1)(E), section 354 does not apply. See, however, section 302.

Example 4. The facts are the same as in *Example 3* of this paragraph (d), except that C receives solely rights to acquire stock in Corporation Z. Section 354 does not apply.

(e) Except as provided in § 1.356-6, for purposes of section 354, the term *securities* includes rights issued by a party to the reorganization to acquire its stock. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain exchanges occurring in connection with a reorganization. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (e) applies to exchanges occurring on or after March 9, 1998.

(f) See § 1.356-7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for nonqualified preferred stock or preferred stock. See § 1.356-7(c) for the treatment

of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).

[T.D. 6500, 25 FR 11607, Nov. 26, 1960, as amended by T.D. 7616, 44 FR 26869, May 8, 1979; T.D. 8752, 63 FR 410, Jan. 6, 1998; T.D. 8882, 65 FR 31078, May 16, 2000; T.D. 8904, 65 FR 58651, Oct. 2, 2000]

§ 1.355-0 Outline of sections.

In order to facilitate the use of §§ 1.355-1 through 1.355-7T, this section lists the major paragraphs in those sections as follows:

§ 1.355-1 DISTRIBUTION OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

- (a) Effective date of certain sections.
- (b) Application of section.

§ 1.355-2 LIMITATIONS.

- (a) Property distributed.
- (b) Independent business purpose.
- (1) Independent business purpose requirement.
- (2) Corporate business purpose.
- (3) Business purpose for distribution.
- (4) Business purpose as evidence of non-device.
- (5) Examples.
- (c) Continuity of interest requirement.
- (1) Requirement.
- (2) Examples.
- (d) Device for distribution of earnings and profits.
- (1) In general.
- (2) Device factors.
- (i) In general.
- (ii) Pro rata distribution.
- (iii) Subsequent sale or exchange of stock.
- (A) In general.
- (B) Sale or exchange negotiated or agreed upon before the distribution.
- (C) Sale or exchange not negotiated or agreed upon before the distribution.
- (D) Negotiated or agreed upon before the distribution.
- (E) Exchange in pursuance of a plan of reorganization.
- (iv) Nature and use of assets.
- (A) In general.
- (B) Assets not used in a trade or business meeting the requirement of section 355(b).
- (C) Related function.
- (3) Nondevice factors.
- (i) In general.
- (ii) Corporate business purpose.
- (iii) Distributing corporation publicly traded and widely held.
- (iv) Distribution to domestic corporate shareholders.
- (4) Examples.
- (5) Transactions ordinarily not considered as a device.
- (i) In general.
- (ii) Absence of earnings and profits.

- (iii) Section 303(a) transactions.
- (iv) Section 302(a) transactions.
- (v) Examples.
- (e) Stock and securities distributed.
- (1) In general.
- (2) Additional rules.
- (f) Principal amount of securities.
- (1) Securities received.
- (2) Only stock received.
- (g) Period of ownership.
- (1) Other property.
- (2) Example.
- (h) Active conduct of a trade or business.

§ 1.355-3 ACTIVE CONDUCT OF A TRADE OR BUSINESS.

- (a) General requirements.
- (1) Application of section 355.
- (2) Examples.
- (b) Active conduct of a trade or business defined.
- (1) In general.
- (2) Active conduct or a trade or business immediately after distribution.
- (i) In general.
- (ii) Trade or business.
- (iii) Active conduct.
- (iv) Limitations.
- (3) Active conduct for five-year period preceding distribution.
- (4) Special rules for acquisition of a trade or business (Prior to the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).
- (i) In general.
- (ii) Example.
- (iii) Gain or loss recognized in certain transactions.
- (iv) Affiliated group.
- (5) Special rules for acquisition of a trade or business (After the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).
- (c) Examples.

§ 1.355-4 NON PRO RATA DISTRIBUTIONS, ETC.

§ 1.355-5 RECORDS TO BE KEPT AND INFORMATION TO BE FILED.

§ 1.355-6 RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONTROLLED CORPORATION.

- (a) Conventions.
- (1) Examples.
- (2) Five-year period.
- (3) Distributing securities.
- (4) Marketable securities.
- (b) General rules and purposes of section 355(d).
- (1) Disqualified distributions in general.
- (2) Disqualified stock.
- (i) In general.
- (ii) Purchase.
- (iii) Exceptions.
- (A) Purchase eliminated.
- (B) Deemed purchase eliminated.
- (C) Elimination of basis.
- (f) General rule.
- (2) Special rule for transferred and exchanged basis property.